

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Fausto Fernandez,

Plaintiff,

-against-

HW Farren, LLC et al.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 2/25/2022

1:21-cv-01717 (JPC) (SDA)

ORDER

STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE:

The Court has been advised that non-party Police Officer Warren Ritter was served with a subpoena in this action, pursuant to Federal Rule of Civil Procedure 45, but failed to appear for his deposition. (*See* 2/24/22 Letter, ECF No. 24.) Defendants have issued a second subpoena, attached to this Order and So Ordered by the Court, for Officer Ritter to appear for a deposition on April 6, 2022. Thus, Officer Ritter is compelled to appear at the time and place indicated in the subpoena for his deposition.

Officer Ritter is warned that if he fails to comply, he may be held in contempt. *See* Fed. R. Civ. P 45(g). Defendants are directed to serve Office Ritter with the subpoena, along with a copy of this Order, no later than Tuesday, March 1, 2022.

SO ORDERED.

Dated: New York, New York
February 25, 2022



STEWART D. AARON
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X,
FAUSTO FERNANDEZ

Plaintiff,

**SUBPOENA TO TESTIFY
AT DEPOSITION**

-against-

1:21-CV-01717 (JPC)(SDA)

HW FARREN, LLC, RIVER STREET IDEALEASE, INC.
and AMILCAR COLON,

Defendants.

-----X

TO: **New York City Police Department
Police Officer Warren J. Ritter
33rd Precinct
2207 Amsterdam Avenue
New York, NY 10032**

GREETINGS:

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend the offices of Lewis Johs Avallone Aviles, LLP., located at 61 Broadway, Suite 2000, New York, New York 10006, or by video conference on a platform to be determined on the 6th day of April, 2022, at 10:00 o'clock in the 'forenoon, and at any recessed or adjourned date to give testimony in this action at a deposition on the demand of the defendants, HW FARREN, LLC, RIVER STREET IDEALEASE, INC. and AMILCAR COLON regarding the accident that occurred on May 23, 2018 at approximately 5:40 a.m. at W.178th Street and Amsterdam Avenue, New York, NY and all of the relevant facts and circumstances in connection with this matter, including all issues regarding liability and damages. A copy of the Police Report is attached hereto and incorporated herein.

Police Officer Ritter is requested to appear for a deposition to provide testimony regarding the foregoing accident, the vehicles involved at the scene of the accident, the

individual(s) involved in the accident, any information in Officer Ritter's possession regarding the damages and injuries claimed to have been sustained by plaintiff, any statements made by plaintiff to Officer Ritter, and any other information in Officer Ritter's possession regarding the accident. Police Officer Ritter is also requested to produce copies of any memoranda, notes, logs, books, records and papers in his custody and possession regarding the aforementioned accident that may be relevant to the issues herein.

The following provisions of Fed R. Civ. P. 45 are attached – Rule 45(c) relating to the place of compliance; Rule 45(d) relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g) relating to your duty to respond to the subpoena and the potential consequences for not doing so.

Dated: New York, New York
February 24, 2022

Yours, etc.,

LEWIS JOHS AVALLONE AVILES, LLP
Attorneys for Defendants
HW FARREN, LLC, RIVER STREET
IDEALEASE, INC. and AMILCAR COLON
61 Broadway, Suite 2000
New York, New York 10006
212.233.7195

By:



David L. Metzger, Esq.

So Ordered:



The Hon. Stewart D. Aaron

Dated: February 25, 2022

Page 1 of 2 Pages

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT (NYC)
MV-104AN (7/11)
 Precinct
033
 Accident No.
NY-2018-033-000660
 Complaint Number
☐ AMENDED REPORT

1	Accident Date Month: 5, Day: 23, Year: 2018 Day of Week: WEDNESDAY Time: 05:40	2	No. of Vehicles: 2 No. Injured: 1 No. Killed: 0 Not Investigated at Scene: <input type="checkbox"/> Reconstructed: <input type="checkbox"/>	3	Left Beams: <input type="checkbox"/> Police Photos: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2	VEHICLE 1 Vehicle 1 - Driver License ID Number: C62920397602722 Driver Name - exactly as printed on license: COLON, ANILCAR Address (include Number & Street): 529 MONROE AVE City or Town: ELIZABETH, State: NJ, Zip Code: 07201		VEHICLE 2 Vehicle 2 - Driver License ID Number: 515370563 Driver Name - exactly as printed on license: FERNANDEZ-RUBIERA, F Address (include Number & Street): 1685 UNIVERSITY AVENUE City or Town: BRONX, State: NY, Zip Code: 10453		
3	Date of Birth: Month: 2, Day: 18, Year: 1972, Sex: M, Unlicensed: <input type="checkbox"/> Name - exactly as printed on registration: RIVER STREET IDEALLEASE INC Address (include Number & Street): 600 S RIVER ST City or Town: HACKENSACK, State: NJ, Zip Code: 07601		Date of Birth: Month: 5, Day: 22, Year: 1967, Sex: M, Unlicensed: <input type="checkbox"/> Name - exactly as printed on registration: FERNANDEZ-RUBIERA, F Address (include Number & Street): 1685 UNIVERSITY AVENUE City or Town: BRONX, State: NY, Zip Code: 10453		
4	Plate Number: AS6288, State of Reg: NJ, Vehicle Year & Make: 2012 INTERNATIONAL, Vehicle Type: TRACTOR TRAILER, Ins. Code: 334		Plate Number: T622895C, State of Reg: NY, Vehicle Year & Make: 2010 TOYOTA, Vehicle Type: TAXI, Ins. Code: 334		
5	Ticket/Arrest Number(s): Violation Section(s):		Ticket/Arrest Number(s): Violation Section(s):		

 Check if involved vehicle is:
☐ more than 85 inches wide,
☐ more than 34 feet long,
☐ operated with an overweight permit,
☐ operated with an overdimension permit.

 VEHICLE 1 DAMAGE CODES
 Box 1 - Point of Impact: 5, 5
 Box 2 - Most Damage: 5, 5
 Enter up to three more Damage Codes: 3, 4, 5

Vehicle By Towed: To

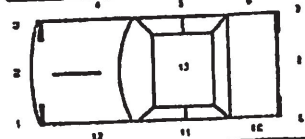
VEHICLE DAMAGE CODING:

1-13. SEE DIAGRAM ON RIGHT.

 14. UNDERCARRIAGE 17. DEMOLISHED
 15. TRAILER 18. NO DAMAGE
 16. OVERTURNED 19. OTHER

 Check if involved vehicle is:
☐ more than 95 inches wide,
☐ more than 34 feet long,
☐ operated with an overweight permit,
☐ operated with an overdimension permit.

 VEHICLE 2 DAMAGE CODES
 Box 1 - Point of Impact: 11, 11
 Box 2 - Most Damage: 11, 11
 Enter up to three more Damage Codes: 3, 4, 5

 Vehicle By Towed: 7 DAYS TOWING
 To 4513 BROADWAY NY, NY 10040


Circle the diagram below that describes the accident, or draw your own diagram in space 99. Number the vehicles.

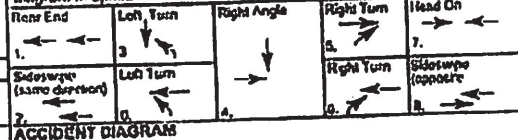

 ACCIDENT DIAGRAM
 2 SIDE SWIPE (SAME DIR)

 Diagram Attached on Subsequent Page
 2 SIDE SWIPE (SAME DIR)

 Cost of repairs to any one vehicle will be more than \$1000.
☐ Unknown/Unable to Determine ☐ Yes ☒ No

 Reference Marker
 Coordinates (if available)
 Latitude/Northing:
40.846153
 Longitude/Easting:
-73.932335

 Place Where Accident Occurred: ☐ BRONX ☐ KINGS ☒ NEW YORK ☐ QUEENS ☐ RICHMOND
 Road on which accident occurred: WEST 178 STREET (Route Number or Street Name)

 at 1) intersecting street: (Route Number or Street Name)
 or 2) S of N of E of W of AMSTERDAM AVENUE (Route Number or Street Name)

Accident Description/Officer's Notes: AT T/P/O DRIVER OF VEHICLE 1 STATES HE WAS MAKING A RIGHT TURN ONTO S/B AMSTERDAM. VEHICLE 2 ATTEMPTED TO PASS HIM ON THE RIGHT TO TURN ONTO S/B AMSTERDAM. VEHICLE 2 STATES HE COLLIDING WITH VEHICLE 1. VEHICLE 1 IS A TRACTOR TRAILER. DRIVER OF VEHICLE 2 STATES HE TRIED TO PASS VEHICLE 1 ON THE RIGHT TO TURN RIGHT ONTO S/B AMSTERDAM, BUT COLLIDED WITH VEHICLE 1. DRIVER OF VEHICLE 2 REMOVED TO CPWC, COMPLAINT OF LOWER BACK PAIN.

Name of all involved		Date of Death Only	
1	COLON, ANILCAR		
2	FERNANDEZ-RUBIERA, F		
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 Officer's Rank and Signature: POM
 Print Name in Full: WARREN J RITTER

 Tax ID No.
959135

 NCIC No.
03030

 Precinct
033

Post/Sector

 Reviewing Officer
SGT BRIAN P MAHER

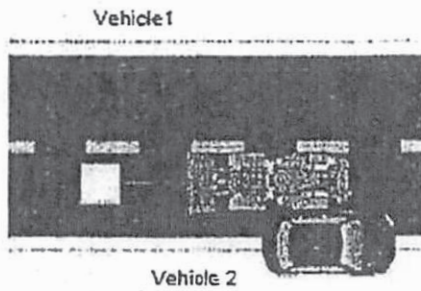
 Date/Time Reviewed
05/23/2018 14:06

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Side Swipe (same dir) : MV-2018-033-000660

Reporting Officer : POM WARREN J RITTER

Reviewing Officer : SGT BRIAN P MAHER Reviewed Date : 05/23/2018 14:06



Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.